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No tendency is more to be deprecated and condemned than that of thrusting the law into the private affairs of the citizen under the guise of the police power. In a free country nothing can be more destructive of private rights. Under the exercise of such a power the majority may crush and burden a minority as arbitrarily as any despot in Europe. The recent case of People v. Reetz, 86 N. W. Rep. 396, brings up for our purpose the constitutionality of such legislation in that phase of it relating to the examining and licensing of physicians. In that case the supreme court held, generally, that under the police power inherent in the state, the legislature may enact reasonable regulations for the examination and registration of physicians, and the practice of medicine and surgery. Counsel argued that such legislation was an interference with the inalienable right of a citizen when ill to employ anybody he chooses as his physician. The contention of counsel, as a general proposition, cannot be successfully contradicted, the statement of the court in this case to the contrary notwithstanding. For the law to tell a man what he shall eat or what he shall drink or wherewithal he shall be clothed is paternalism with a vengeance, and is often practically accomplished under many laws regulating the adulteration of food products, the sale of liquor, and tariffs on foreign goods, etc. But to compel a man lying on a bed of sickness to call in a physician of a certain school or schools recognized by the state, but in whom the sufferer has no confidence, or else to languish without treatment, is as cruel and as unwarrantable an interference with private right as to require him under more serious conditions of health to accept the comforts of religion from a minister having the state indorsement.

Medicine is not an exact science. Some people believe in allopathy, others say that nature cures when it does cure in spite of its volcanic purges; some believe in homeopathy, others call it the greatest humbug of the age; some believe in Christian Science, others condemn it as criminal and suggest that those who practice it be prosecuted for manslaughter or assault to kill as the case may be; some believe in osteopathy, others will point suggestively to their foreheads as a votary of the new school passes by. And so we might go on with all the other opathies and treatments, dry air, cold water, magnetism, etc., etc. In many of these a knowledge of even the rudiments of *materia medica* is not essential, so that no general examination could possibly let them all in. The state therefore by requiring such an examination must necessarily shut out all schools of medicine not represented in the board of examiners or covered by the examination. Nothing but the most absurd sophistry could conceal the fact that this is a most gross violation of individual liberty, smothering all investigation of disease and its remedy or alleviation, except in certain directions, and compelling a man in sickness or pain to do without treatment unless he is willing to accept that prescribed by the state. This is not the police power, it is tyranny, and the tyranny of a majority is as bad as any other tyranny.

It is a pleasure, however, to observe a tendency of late on the part of the courts to recognize the invasion of private right inherent in such legislation and, while not declaring it unconstitutional, to meet its most serious defects by constructional limitation. Thus in Evans v. State, 9 Ohio, S. & C. P., Dec. (Ohio, 1899) 222, it was held that a statute prohibiting any person not having a certificate from the board of medical registration from prescribing, directing or recommending any drug, medicine or other agency for the treatment, cure or relief of any bodily imfirmities did not include the system known as "Christian Science." So also in Kentucky it was held that a similar statute did not prevent an osteopath from practicing his profession without a license. Nelson v. State Board of Health (Ky. 1900), 57 S. W. Rep. 501, 50 L. R. A. 383. See also State v. Liffring, 61 Ohio St. 39, 46 L. R. A. 334. *Contra*, Jones v. People, 84 Ill. App. 453. In the case of Nelson v. Board of Health, the court said: "[This statute] allows only reputable physicians holding a diploma from a regular or reputable school to practice medicine. If the act applies to appellant, he can

in no case practice his system in this state; for, however well qualified he may be, he cannot be examined as a physician, and he could not, without abandoning his practice as an osteopath, obtain a diploma from a medical college. If the statute applies to him, it also applies to trained nurses, and all others of that class, who for compensation administer to the wants of the sick. The result of such a construction of the statute would be to compel every one, whether willing or unwilling, to employ a registered physician to care for him when he is sick, or to trust himself entirely to gratuitous services, however much he might prefer skillful nursing to medical treatment. It is doubtful if the legislature has the right under the constitution thus to restrict the free choice of the citizen in a matter concerning only himself, and not the people at large."

NOTES OF IMPORTANT DECISIONS.

MINES AND MINING—JUDGMENT LIENS—UNPATENTED CLAIMS.—The effect of a judgment lien upon an unpatented mining claim came up recently in the case of Butte Hardware Co. v. Frank, 65 Pac. Rep. 1, where the Supreme Court of Montana held that a judgment lien on an unpatented mining claim is not lost by the transfer of the claim by the judgment debtor, on the ground that such transfer is an abandonment thereof, since the transfer of an unpatented claim does not amount to an abandonment. The court said: "The point is raised by respondents that a judgment, if a lien, would not be such after sale of the mining claim,—he giving up possession to the vendee,—for the reason that such sale would be an abandonment, and all his rights would be gone, and the lien with them. In support of this position counsel cite Murley v. Ennis, 2 Colo. 300, which declares that title by location may be lost by abandonment, and that if, without writing, he yield up the possession to another, 'the right of the first occupant is gone by abandonment, and by virtue of his occupancy a new right has arisen in him who succeeds.' It is to be noted that the transfer is said to be abandonment if made without writing. The alleged transfer from Ritchie to Frank was in writing; hence the authority does not fit the averment of the complaint. Section 2332, Rev. St. U. S., clearly contemplates the buying and selling of mining claims, as it provides that, upon application for patent, evidence may be offered to show the possession of and work done by the applicant's grantors. It would be absurd to permit sales for the benefit of the vendees, and then declare such sales proof of abandonment of all rights of the grantor."

HOMESTEAD—FAILURE OF DEBTOR TO OCCUPY LAND UNTIL AFTER EXECUTION WAS LEVIED.—It is the general rule that the homestead right is never forfeited when there has been an occupancy, and then a temporary removal, with the intention to return and make the premises a home; but where there has never been an actual residence and use of the property as a home, a mere intention to so occupy it some future time will not be sufficient to protect the homestead. Solary v. Hewlett, 18 Fla. 756. An interesting phase of this question recently arose in the case of Marshall v. Mahorney, 63 S. W. Rep. 471, where the court of appeals of Kentucky held that land acquired by purchase could not be held exempt as a homestead, where it was not occupied as such until after the creditor's execution was levied thereon, though it was so occupied at the time it was sold under the levy. The court in this case says: "We are aware that in a number of cases this court has held that, where the title to the homestead was derived by descent, the heir was entitled to a reasonable time after the death of the ancestor to claim homestead, and that until such time had elapsed it could not be levied on and sold, even if the debt existed at the time it was inherited. See Jewell v. Clark's Exr., 78 Ky. 398; Dwelly v. Galbraith, 5 Ky. Law Rep. 209, and Miller v. Bennett (Ky.), 12 S. W. Rep. 194. The opinions are predicated upon the idea that the statute does not deny exemption if the title be derived by descent, and not by purchase. But this doctrine has not been extended to cases where the title to the homestead was acquired by purchase, and the construction by this court seems to be generally supported by those of other states." Authorities sustaining the position of the court are as follows: Austin v. Stanley, 46 N. H. 51; Jackson v. Bowles, 67 Mo. 609; Kelly v. Dill, 23 Minn. 435; Ingels v. Ingels, 50 Kan. 755, 32 Pac. Rep. 387; Tiller v. Bass, 57 Ark. 179, 21 S. W. Rep. 34; Freeman v. Stewart, 5 Biss. 19, Fed. Cas. No. 5088. It may be stated, therefore, as the general rule, that in cases of levy under execution, the homestead exemption must exist or be claimed at the time the writing came into the officer's hands. The defendant, moving into the property thereafter, cannot hold it exempt as a homestead.

RECEIVERS—RAILROADS—LIABLE AS COMMON CARRIER.—Whether receivers in control of a railroad are liable as common carriers has always been an interesting question. It is well settled, however, that in his official capacity, at least, he is liable to the same extent as a common carrier. He is liable for injuries to passengers. Dillingham v. Anthony, 73 Tex. 47; Brown v. Railroad, 96 Ill. 297; Newell v. Smith, 49 Vt. 255; Bartlett v. Keim, 50 N. J. Law, 260. He is liable for goods lost or damaged in transportation. Nichols v. Smith 115 Mass. 332; Melendy v. Barbour, 78 Va. 544. He is liable for injuries

to employees from defective appliances and for the negligence of other servants. Meara v. Holbrook, 20 Ohio St. 137; Sloan v. Railroad, 62 Iowa, 728; Kain v. Smith, 80 N. Y. 458. But in recent case of Powell v. Sherwood, 63 S. W. Rep. 485, the Supreme Court of Missouri ran up against the question in its relation to laws relating to fellow-servants, and held that Laws of 1897, p. 96, defining the liabilities of railroad corporations in relation to damages sustained by their employees, and stating who are fellow-servants, applies to receivers of railroad corporations, as well as to the corporations themselves. There is some conflict of authority on this point, some cases affirming the position of the Missouri court. McNulta v. Lochridge, 141 U. S. 327, 12 Sup. Ct. Rep. 11; Sloan v. Railroad, 62 Iowa, 728; Pierce v. Van Dusen, 78 Fed. Rep. 693. Other cases take a contrary view: Henderson v. Walker, 35 Ga. 481; Campbell v. Cook, 86 Tex. 630, 26 S. W. Rep. 486; United States v. Harris (1900), 20 Sup. Ct. Rep. 609; Thurman v. Railroad, 56 Ga. 376. In Henderson v. Walker, *supra*, the court construed a statute commencing "Railroad companies shall be liable to such employees as to passengers for injuries," etc. Suit was brought under this statute against the receivers of a railroad to recover damages for injury to a servant caused by the negligence of a fellow-servant. It was held that the statute referred only to servants of a railroad company, and would not be construed as extending to servants of the receivers of a railroad company, and that the receivers were not liable. In the principal case, however, the court said: "In respect of liability, such as is set up here, the receiver stands in the place of the corporation. In other words, the receivership is *pro hac vice* the corporation itself under the management of one man, instead of that of a board of directors. To hold, therefore, that the statute applies to corporations of a certain kind under one management, and not to corporations of the same kind under another management, would be to create the inequality before the law."

TAXATION MUST BE FOR A PUBLIC PURPOSE.—The power of a legislature to levy or to authorize the levy of a tax and to create or authorize the creation of a public debt to be paid by taxation is limited to its exercise for a public purpose. Sharpless v. Mayor, 21 Pa. 147; Cole v. City of La Grange, 113 U. S. 1, 5 Sup. Ct. Rep. 416. The decision of the question whether a tax or a public debt is for a public or private purpose is not a legislative, but a judicial function. Thus, in the recent case of Dodge v. Township, 107 Fed. Rep. 827, it was held that the promotion of the construction and operation of mills and factories to manufacture sorghum cane into sugar or syrup is a private and not a public purpose, and township bonds issued for this purpose, and the Act of March 1, 1889, authorizing their issue, are beyond the powers of the legislature and the township, and are void. The court said:

"A legislature which has no power to authorize the levy of a tax or the creation of a public debt for a private purpose, has no power to draw that authority to itself, or to create it by its mere declaration that a private purpose is a public one. A legislature cannot make a private purpose a public one by its mere fiat, and the determination of the question in any case whether or not a given object is public or private is a judicial, and is not a legislative function. Allen v. Inhabitants of Jay, 60 Me. 124, 11 Am. Rep. Rep. 185; Tyler v. Beacher, 44 Vt. 648, 651, 8 Am. 398; *In re* Eureka Basin Warehouse & Mfg. Co., 96 N. Y. 42, 47, 48. If the bonds and coupons upon which this action is founded are ever paid, the money to discharge them must be raised by the levying of taxes upon private property situated in the township of Mission. Their validity, therefore, must depend upon the answer to the question whether they were issued for, and their proceeds were applied to a public or a private purpose. They were issued to raise money to pay a subscription made by the township to the stock of a private corporation organized to erect and operate mills to make sugar and syrup from sorghum cane, and their proceeds were applied to that purpose. The question, then, is whether or not the construction and maintenance of factories owned by private corporations to manufacture sugar and syrup from sorghum cane is a public or a private purpose. The true answer to the question seems to be plain and certain. Speaking generally, a public purpose is a governmental purpose, one of the purposes for which governments are instituted and maintained among men, such as the maintenance of order, the prevention and punishment of crime, the care of highways, the relief of the destitute, the education of youth, the erection of buildings for the use of schools and of the officers of the government; while a private object is one which is ordinarily sought and attained by individuals or private associations of individuals, such as the cultivation of the soil, the manufacture of useful and attractive articles, the purchase and sale of merchandise, and the thousand and one purposes which enlist individual enterprise and energy in a complex and advancing civilization. There seems to be no doubt in which category the promotion of the construction and maintenance of sugar factories falls."

THE APPLICATION OF THE "ALIEN CONTRACT LABOR LAWS" OF THE UNITED STATES.

The "alien contract labor law" of the United States provides that it shall be unlawful to "assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners, into the United States, under contract or agreement, parol or special, express or implied, made previous to the im-

portation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind in the United States."[1] Section 5 of the act designates the classes of aliens whose employment is not forbidden, namely: (1) private secretaries, servants or domestics of foreigners temporarily residing here; (2) skilled workmen to perform labor in or upon any new industry not at present established here, where such skilled labor cannot be otherwise obtained; and (3) professional actors, artists, lecturers or singers, and persons employed strictly as personal or domestic servants. The act, it will be observed, forbids in broad and general terms the employment of aliens "to perform labor or service of any kind," and specifies the classes of laborers or persons performing services to whom the prohibition shall not apply. In the case of United States v. Church of the Holy Trinity,[2] it was held in 1888, by the circuit court of the United States, that the act was violated by the employment of a foreign clergyman to officiate as rector of a church in New York. The court said that every kind of industry and every employment, manual or intellectual, was embraced by the words "to perform labor or service of any kind," and prohibited the employment of alien ministers, lawyers, surgeons and all others who labor in any professional calling, and that the mention of certain classes of professionals as not being within the prohibition of the act was equivalent to an express prohibition of the employment of all other classes of professionals.

This decision was reversed by the Supreme Court of the United States in 1892,[3] upon the ground that the act was intended to prohibit only the employment of foreign "cheap, unskilled labor." In other words, the supreme court indirectly decides that the employment of an alien skilled laborer is not prohibited by the act. A person who receives as much as $2 per day for his labor or services cannot be termed a "cheap, unskilled laborer," in the sense intended by the supreme court. Therefore, the supreme court in effect decides that the employment of foreign artisans or mechanics at $2 or more per day is not prohibited by the alien contract labor law. To that extent the decision is, of course, a mere *obiter dictum*, as the court did not have before it the case of an artisan or mechanic or other "skilled laborer," as distinguished from the case of a professional man. In consequence of this difference of opinion between the courts as to the true construction of the act, it was amended in 1891 by adding to the second proviso, excepting certain classes of persons from the operation of the law, the words "nor to ministers of any religious denomination, nor persons belonging to any recognized profession nor professors for colleges and seminaries."[4] In the case of United States v. Laws,[5] the supreme court held, affirming the court below, that a foreign chemist, employed to superintend the making of sugar on a plantation in Louisiana, was a member of a "recognized profession," within the meaning of the amendment of 1891, and that his employment was therefore not a violation of the law. But the court went further and reiterated the *dictum*[6] of Mr. Justice Brewer in Holy Trinity Church v. United States, that the act prohibits only the employment of "cheap, unskilled foreign labor." The construction which the treasury department and the public at large have placed upon the law, as it now stands, is that the employment of aliens in any business, calling or occupation, or to perform any labor or service, is prohibited by the act of 1885, unless the employee falls within one of the classes specially excepted by section 5 of that act, or by the amendment of 1891, from the operation of the law. The *obiter dictum* of the supreme court that the prohibition of the act extends only to the employment of "cheap, unskilled labor" has not been enforced by the treasury department, nor taken seriously by the great body of employers throughout the United States.

Inasmuch as the case of the employment of an alien mechanic or other "skilled laborer" not within the professional or *quasi*-professional classes, has never been presented to the supreme court, and inasmuch as a doubt may be reasonably entertained that the supreme court would decide that the employment of such a person is permissible under

[1] Act Cong. February 26, 1885, 23 Stat. 332.
[2] 36 Fed. Rep. 303.
[3] 143 U. S. 457.
[4] Act March 3, 1891, sec. 5, 26 Stat. 1084.
[5] 163 U. S. 258.
[6] The writer disclaims the use of this term in the invidious sense in which it is sometimes employed.

the "cheap, unskilled labor" theory if the question were squarely presented there, the writer conceives that he may, with propriety, submit several reasons why the construction placed upon the act by the treasury department and the public should be maintained, at least so far as it applies to persons who receive wages of $2 per day and upwards, and who cannot be described as "cheap, unskilled laborers."

1. The express prohibition of the employment and importation of aliens "to perform labor or service of any kind" in the United States. Lest this language might be construed to extend to certain classes who could not come in competition with the great mass of American laborers, congress, in the fifth section, excepted professional actors, artists, lecturers, and singers from the operation of the act, and afterwards, by the amendment of 1891,[7] extended the exception to "ministers of any religious denomination, persons belonging to any recognized profession, and professors for colleges and seminaries." Congress by these provisions unmistakably construes the act to extend to every class of laborers not embraced in the exceptions. It would be difficult to find any better evidence of the kind of laborers intended by the act. Congress having specified the classes of persons not within the operation of the statute, may the courts add another vague, general and indefinite class, namely, all persons coming here under contract "to perform labor or service" who cannot be classed as "cheap, unskilled laborers."

2. Section 5 of the act of 1885, provides[8] that the act shall not be so construed as to prevent the employment of "skilled workmen in foreign countries to perform labor in the United States in or upon any new industry not at present established in the United States, provided that skilled labor for that purpose cannot be otherwise obtained." This is as much as to say that no foreign skilled workman can be brought to the United States under contract, in the establishment of a new industry if skilled labor for that purpose can be obtained here. And it shows beyond possibility of cavil or doubt that the act was intended, as respects established industries, to prohibit the introduction of alien skilled laborers under contract to perform labor or services here. This provision of the law is not referred to by the supreme court in either of the two cases mentioned, and no attempt is made to reconcile the statement that the act was intended to exclude only "cheap, unskilled labor" with this indirect, but unmistakable, declaration that the purpose of the act is to exclude skilled as well as "cheap, unskilled laborers."

3. There is another provision in the act which shows that the prohibition is not to be restricted to the employment and importation of cheap, unskilled laborers. Section 4 imposes a severe penalty upon the master of any vessel who shall permit any "alien laborer, mechanic, or artisan" to land in the United States, knowing him to be under contract to perform labor or services here.[9] A mechanic or artisan is not a "cheap, unskilled laborer." The average wage paid him in America is from $2 to $3 per day, a sum three to four times as great as that paid laborers of the low and degraded kind referred to in the case of Holy Trinity Church v. United States.[10] The opinion in that case contains no reference to this provision of the act.

Other statutes also show that congress construes the prohibition to extend to the employment and introduction of alien skilled laborers. By the act of August 5, 1892,[11] it was provided that exhibitors at the World's Columbian Exposition at Chicago might contract with and bring in "such mechanics, artisans, agents, or other employees as they may deem necessary for the purpose of installing or conducting their exhibits," and that any such alien remaining in the United States a certain length of time after the close of the exposition should be subject to all the penalties of the alien contract labor law. A similar provision is contained in a number of acts relating to fairs and expositions.[12] Of course, there would have been no necessity for any of these acts if congress did not construe the act to exclude skilled as well as unskilled laborers.

4. A further evidence of the construction

[7] 26 Stat. 1084, sec. 5.
[8] 23 Stat. 332.
[9] Sec. 4, Act February 26, 1885, 23 Stat. 332.
[10] 143 U. S. 457.
[11] 27 Stat. 402.
[12] 28 Stat. pp. 1, 967, 224, 60 9, 29 Stat. 474, 30 Stat. 22.

placed by congress upon the act of 1885 is found in the amendment of 1891.[13] At that time the construction given the act by the treasury department was well known to congress. It had been brought to their attention by the proceedings against Trinity church in 1888 to recover the penalty of $1,000 for a violation of the law in bringing an alien to this country under contract to officiate as a clergyman. The application of the law was, at that time, the subject of much discussion and of many interviews between committees of congress and the officials charged with the enforcement of the act. Yet the amendment consisted merely of a provision which excluded professional persons from the operation of the statute. It seems reasonable to assume that if congress intended the act to apply only to the employment and introduction of "cheap unskilled labor" having knowledge of a different construction adopted by the treasury department, they would have set the matter at rest by expressing such intention in the amendment. Their failure to restrict the application of the act to "cheap unskilled labor" at this opportune time must, under such circumstances, be deemed a legislative adoption or affirmation of the departmental construction of the act.

5. The cases which have been decided by the courts, with the exception of the two cases already referred to and the case of United States v. Gay,[14] recognize no distinction between skilled and unskilled labor in the application of the contract labor laws. The first case which arose was that of United States v. Craig,[15] which was a suit to recover the penalty for violating the law in employing and bringing to this country an alien ship carpenter. There was a demurrer to the declaration on the ground that the act was unconstitutional, but judgment was rendered for the plaintiff. It was not even suggested by the defendant that the employment of such a highly skilled mechanic was not forbidden by the act. The remarks of Mr. Justice Brown in this case were quoted in Holy Trinity Church v. United States as supporting the view that the act applies only to the employment of cheap unskilled laborers. The result of the suit scarcely justifies the citation.

The next case was that of United States v. Thompson.[16] Here the penalty of $1,000 was recovered from the defendant for employing and bringing in a French woman under contract as a milliner. Such a person, if very expert in her business, might be considered somthing more than a skilled laborer; the defense was that she was a "professional artist," within the exception of the statute. The court held that she was not such in the sense of the statute; but it was not suggested by any one that the act did not apply to the class of highly skilled operatives to which this person belonged.

In the case of United States v. McCollum[17] it was held that the manufacture of "French silk stockings" was a "new industry" in the United States, which would justify the employment of alien skilled laborers if such laborers could not be found in the United States, but judgment for the penalty $1,000 was rendered against the defendant upon the ground that he failed to show a proper effort to find skilled weavers in this country. In the case of United States v. Bromley,[18] in which the alleged violation of the law consisted in employing and bringing foreign lace curtain makers to this country, judgment was rendered for the defendant on the ground that the manufacture of fine lace curtains was a "new industry" in the United States.

In all these cases it must be conceded that the employees were, to say the least, skilled laborers of a high class, yet in none of them was it intimated by the court or suggested by the defendants themselves, that the act applied only to the employment and introduction of cheap unskilled laborers.

In the case of the United States v. Gay,[19] decided by the Circuit Court of Appeals in 1899, the question was squarely presented whether a certain person, who was not a common laborer, and who was not within any of the exceptions of the acts of 1885 and 1891, might lawfully be brought to the United States under a contract of employment. The employee in this case was a

[13] 26 Stat. 1028.
[14] 95 Fed. Rep. 226.
[15] 28 Fed. Rep. 795.
[16] 41 Fed. Rep. 28.
[17] 44 Fed. Rep. 745.
[18] 58 Fed. Rep. 554.
[19] 95 Fed. Rep. 226.

"window dresser," and was to receive $14 a week for his services, about the average wages paid ordinary carpenters in this country. The court held that the employment and bringing in of this person was not a violation of the law. They said that the employment of such a person was not within the "spirit" of the statute, and quoted all that was said in Holy Trinity Church v. United States, and United States v. Lane in support of the view that the act is intended to exclude only "cheap unskilled laborers." They said that the only service congress intended to shut out was the "cheaper, grosser sort of unskilled and unhoused manual labor" which came in competition with the common labor of this country; common hands, who work with spade, shovel or wheelbarrow and the like, the value of whose labor consists principally in the physical results accomplished. They said this in spite of a provision in the act before them that made it an offense to employ and bring into this country foreign "skilled workmen" to establish a new industry here when adequate skilled labor could be obtained here. But the case contains no reference whatever to that clause of the statute, nor to other statutory provisions which indicate the construction which congress itself has placed upon the act. It is a mere adherence to the *obiter dictum* of the supreme court that the act was intended only to exclude cheap unskilled laborers. It is to be regretted that no appeal could be taken in this case by the United States, and no opportunity afforded for the decision of a case directly in point by the supreme court.

C. Lustily the impossibility of a consistent and harmonious administration of the law by the immigration officers at the different ports throughout the United States under the "cheap, unskilled labor" theory. No two officers can be found who will have precisely the same idea as to who are cheap, unskilled laborers. The statutes, as they stand, are capable of a fair degree of certainty and precision in their administration, because they provide that all foreign contract laborers shall be excluded except certain classes accurately described by reference to their occupations or professions. But that which is certain and fixed about the acts is dissipated by the loose expression, "cheap, unskilled laborers." Difficulties arise in two ways: First, as to the occupations which require and those which do not require skilled labor. There are certain occupations which an officer at one port would assign to the skilled labor class, but which an officer at another port would promptly classify as requiring only common, ordinary labor. Second; as to the particular persons in a trade or calling who may be classed as cheap, unskilled laborers. Some raw and inexperienced tailors receive less than 75 cents per day in the New York "sweat shops," others, expert in the business, receive high wages. Here are cheap, unskilled tailors and highly skilled tailors. And so with all other occupations and callings. In each there are "cheap, unskilled laborers" and highly skilled laborers. But it is obviously impossible for the immigration officers to discriminate the two classes when they land in this country under contract to work at their trade or calling. If the statute had, in terms, made unlawful the employment of foreign "cheap, unskilled laborers" to perform labor or service in the United States and had stopped there, it would beyond doubt have been condemned as crude legislation, by reason of the vague and general character of the description of the laborers, especially in view of the penalty of $1,000 imposed for violation of the act. Should the question of the validity of a contract with a foreign skilled workman to perform labor or service in the United States be directly presented to the Supreme Court of the United States in the future, and the attention of the court be particularly directed to that clause of the act which provides that skilled foreign labor may be employed in the establishment of a new industry in this country only in cases in which skilled workmen for that purpose cannot be found in the United States, it is confidently believed that the court will distinguish the case so presented from those of the minister and chemist and refuse to be bound by the *dictum* that the act applies only to contracts of employment with cheap, unskilled foreign laborers.[20]

CHAPMAN W. MAUPIN.

Washington, D. C.

[20] Other cases arising under the alien contract labor laws, but not specially pertinent to the point under consideration, are: Lees v. United States, 150 U. S. 476; *In re* Florio, 43 Fed. Rep. 114; *In re* Cummings, 32 Fed. Rep. 75; United States v. Mexico Nat.

[Since the above article was prepared, the Attorney General of the United States, under date of January 28, 1901, has rendered an opinion that the employment of a foreign skilled laborer abroad by an American is a violation of the alien contract labor laws.]

R. Co., 40 Fed. Rep. 769; United States v. Borneman, 41 Fed. Rep. 751; *In re* Florio, 43 Fed. Rep. 114; United States v. Edgar, 45 Fed. Rep. 44; United States v. Mich. Cent. R. Co., 48 Fed. Rep. 365; Moller v. United States, 57 Fed. Rep. 490; *In re* Howard, 63 Fed. Rep. 263.

JUDGMENT — CONFESSION — POWER OF ATTORNEY.

CRIM v. CRIM.

Supreme Court of Missouri, May 21, 1901.

Where defendant gave a note authorizing any attorney at law to appear in any court in the United States, waive process, enter an appearance, and confess judgment thereon, such appearance by an attorney gives the court jurisdiction to enter a personal judgment against defendant, and an action on such judgment may be maintained in the courts of another state.

Marshall, J.: The following opinion was heretofore rendered in this case by division No. 1 of this court:

"Action upon a foreign judgment for $7,004. Judgment for defendant. Plaintiff appeals. The parties are brothers, and both formerly lived in Ohio. The defendant was in debt to the plaintiff, and on the 10th of November, 1881, was about to remove to Missouri. The plaintiff demanded a settlement, and the defendant, as he says, because he would have had trouble if he had not done so, gave the plaintiff his note for $4,000, payable at one year, with 6 per cent. interest, in settlement of the debt. The note contained a *cognovit* authorizing any attorney at law to appear in any court of the United States, waive process, enter appearance, and confess judgment against defendant for the amount due on the note, including interest and costs, and to release all errors. On the 14th of October, 1891, the plaintiff instituted suit against the defendant in the court of common pleas of Stark county, Ohio, upon the note. Pursuant to the terms of the note, W. J. Piero, an attorney of that court, entered the defendant's appearance, waived process and confessed judgment for $7,004, the principal and interest due on the note, released all errors, and waived all rights of appeal. Thereafter the plaintiff instituted this suit in the Barton county circuit court on the foreign judgment. The answer of the defendant is a general denial, with special pleas: (1) That the Ohio court had no jurisdiction, because defendant was, and had been for over 10 years a resident of Barton county, Mo., and was not summoned and did not appear in the Ohio court, and never authorized Piero or any one else to appear for him, and that at the time the suit was begun in Ohio the debt was barred by limitation in Missouri; (2) that the parties are brothers, and the defendant, being in debt to the plaintiff was about to remove to Missouri, and plaintiff asked defendant to sign a note for the balance due plaintiff, saying he only wanted a settlement and would never enforce the note against defendant; that defendant did not in fact owe the plaintiff as much as $4,000; that he signed the note understanding that it was only a promissory note, and not knowing that it contained a provision authoring a confession of judgment, and never having agreed to grant such authority to any one; that the plaintiff falsely and fraudulently represented to him that it was only a promissory note, and concealed from him the fact that it contained a *cognovit;* and that relying on the statements of the plaintiff, he signed the note without reading it or examining it. The trial developed the facts to be that notes of this character are usually used in Ohio; that the defendant had been largely engaged in dealing in cattle while he lived in Ohio, and had executed many such notes, and that several judgments had been rendered against him thereupon similar notes under the *cognovit* therein contained; that he had procured many loans from the banks upon similar notes, and that the banks would not make loans upon any other kind of paper; that he had given similar notes to other persons before leaving Ohio; that there were no representations made to him about the character of this note when he signed it, and no attempt made to conceal its character from him; that he owed his brother some amount,—the brother says $5,000, and he says it was not so much,—and that his brother offered to settle it if he would give him this note for $4,000; and that he did so because 'I expect I would have had to sign the note or got into trouble.' The court refused all the instructions asked by the plaintiff, and on its own motion instructed the jury as follows: 'You are instructed that your verdict will be for the plaintiff for the full amount of the judgment sued on, with interest on the same from October 14, 1891, to date at the rate of 6 per cent. per annum, unless you further believe, from the preponderance or greater weight of the evidence, that the defendant, at the time he signed the note upon which the judgment sued on is based, had no knowledge that the said note contained a power of attorney to confess judgment and had no intention to sign such a note, in which case your verdict will be for the defendant.' The jury found for the defendant, judgment was entered upon the verdict, and after proper steps the plaintiff appealed.

"1. There was no fraud, misrepresentation, trick, or concealment in the procurement of the note. It may be true the defendant did not read it before he signed it; but he was *sui juris*, had full opportunity to read it, and deliberately signed it. The law presumes he knew its contents, and he cannot be permitted now to take

advantage of his own fault or negligence. O'Bryan v. Kinney, 74 Mo. 125; Snider v. Express Co., 63 Mo. 376; Railway v. Cleary, 77 Mo. 637; Mateer v. Railway Co., 105 Mo. 352, 16 S. W. Rep. 839; Kellerman v. Railroad Co., 136 Mo. 177, 34 S. W. Rep. 41, 37 S. W. Rep. 828; 1 Whart. Conv. § 196. The defendant relies on Wright v. McPike, 70 Mo. 175, approving what was said in Briggs v. Ewart, 51 Mo. 249, as follows: 'It may be assumed as an axiom that no one can be made a party to a contract without his own consent. Although his signature may be put to the writing, and may have been written by himself, yet if he did not know what he was signing, but acted honestly under the belief that he was signing some other paper, and not the one he really signed, he ought not to be bound by such signature.' In McPike's case this was quoted, and then it was said: 'Although that case has been overruled, the doctrine announced in the foregoing extract from the opinion was not disturbed by the court in the overruling decision. As between the original parties, if one has procured the signature of the other to a written agreement, whether by fraud or not, which does not contain the contract made by the parties, but a different one, he cannot be permitted to avail himself of that contract, but must stand by the one which was in fact entered into by both parties.' In Briggs v. Ewart, *supra*, it was held that such a defense could be made, even if the note was held by a *bona fide* purchaser for value and without notice before maturity. This case, as was also the case of Corby v. Weddle, 57 Mo. 452, which follow it, was expressly overruled in Shirts v. Overjohn, 60 Mo., *loc. cit.* 312. The doctrine further announced in McPike's case, that as between the original parties such questions are open to inquiry in a suit at law upon the note, whether the note was made by fraud or not, is no longer the law in this state, as the cases cited above clearly show. Courts of equity set aside contracts procured by fraud, and reframe contracts where there has been a mutual mistake of the parties; but it is an invariable rule of law that, in the absence of fraud or mistake, parol evidence is not admissible to contradict or vary a written contract. The written contract is conclusively presumed to merge all prior negotiations, and to express the final agreement of the parties. To permit a party, when sued on a written contract, to admit that he siged it, but to deny that it expresses the agreement he made, or to allow him to admit that he signed it, but did not read it or know its stipulations, would absolutely destroy the value of all contracts and negotiable instruments. The reason underlying the rule is to give stability to written agreements, and to remove the temptation and possibility of perjury, which would be afforded if parol evidence was admissible. But, aside from these considerations, this is a suit upon a judgment, and not upon the note. The note is merged in the judgment, and the defenses that might have been available, if properly interposed in the suit on the note, are not open to review here. Even if there was fraud in the note constituting the cause of action, the judgment cannot be attacked. Only fraud in the very act of procuring the judgment can be interposed as a defense to the judgment, even in the direct attack in equity to set aside the judgment. Hamilton v. McLean, 139 Mo. 678, 41 S. W. Rep. 224; Bates v. Hamilton, 144 Mo., *loc. cit.* 11, 45 S. W. Rep. 641.

"2. Judgments upon notes containing such a *cognovit* are valid judgments in Ohio. Matthews' Lessee v. Thompson, 3 Ohio, 272; Watson v. Paine, 25 Ohio St. 340; Clements v. Hill, 35 Ohio St. 141. Such judgments are also valid in other states. Hansen v. Schlesinger (Ill. Sup.), 17 N. E. Rep. 718; Roche v. Beldam, 119 Ill. 320, 10 N. E. Rep. 191; Holden v. Bull, 1 Pen. & W. 460; Ely v. Karmany, 23 Pa. 314; Stein v. Brunner, (La.), 7 South. Rep. 718; Shoe Co. v. Falk, (Wis.), 61 N. W. Rep. 562. The identical question here involved came before this court in Randolph v. Keiler, 21 Mo. 557, where the suit was upon a judgment rendered by the 'inferior court of common pleas, in and for the county of Sussex, state of New Jersey,' upon a note containing a *cognovit* in almost the exact terms with the note upon which the Ohio court entered judgment in this case. Practically the same defenses were made there that are made here. But it was held that such judgment was valid in New Jersey, even though neither of the parties were citizens of that state, or had ever been in that state, and, this being so, the judgment was entitled to 'full force and credit' in this state, under section 1 of article 4 of the constitution of the United States; and hence the New Jersey judgment was enforced here. Similar judgments are enforced in other jurisdictions, even though the defendant was a resident of another state than that in which the judgment sought to be enforced was rendered. Kitchen v. Bank (Kan. Sup.), 36 Pac. Rep. 344; Ritter v. Hoffman, 35 Kan. 215, 10 Pac. Rep. 576; Craft v. Clark, 38 Iowa, 237; Nicholas v. Farwell, 24 Neb. 180, 38 N. W. Rep. 820; Snyder v. Critchfield (Neb.), 62 N. W. Rep. 306; Sipes v. Whitney, 30 Ohio St. 69. The question whether the note upon which the judgment sued on was barred by limitation in Missouri is not open to review here. The suit is upon the judgment, and that is not barred by limitation. It follows that the trial court erred in giving the instruction quoted, and also that neither the answer nor the evidence shows any defense to the suit. The trial court should have directed a verdict for the plaintiff, and the judgment of that court is reversed, and the cause remanded, to be proceeded with in accordance herewith."

Upon motion the cause was transferred to court *in banc*, upon the dissent of Valliant, J. The case has again been fully argued and further briefed by counsel. In addition to what is said in the divisional opinion, it is proper to say that the cases of D'Arcy v. Ketcham, 11 How. 165, 13 L.

Ed. 648, and Pennoyer v. Neff, 95 U. S. 714, 24 L. Ed. 565, are not applicable to the case at bar, —the first, because there was no service of any kind upon the partner who lived in Louisiana, and therefore the personal judgment of the New York court against him was void; and the second, because the service was by publication, constructive, and therefore it would not support a personal judgment, while in the case at bar the defendant was in court by his own voluntary act when the judgment was rendered against him. Counsel for defendant, in a supplemental brief, has referred to the following cases as authority for the contention that the decision in this case and that in Randolph v. Keller, 21 Mo. 557, are not in harmony with the rule and policy in this state. Overstreet v. Shannon, 1 Mo. 529; Sallee v. Hays, 3 Mo. 116; Smith v. Ross, 7 Mo. 464; Gillett v. Camp, 23 Mo. 375; Miles v. Jones, 28 Mo. 87; Foote v. Newell, 29 Mo. 400; Latimer v. Railway Co., 43 Mo. 105; Sevier v. Roddie, 51 Mo. 580; and State v. Bunce, 65 Mo. 349. A careful examination of these cases shows, however, that they have no application to the case at bar. Thus, in Overstreet v. Shannon, 1 Mo. 529, it appeared that the defendant had not been served in any manner in the foreign state. In Sallee v. Hays, 3 Mo. 116, the judgment was against the defendants, who were non-residents of the foreign state, without any service whatever, upon a covenant of their ancestor, and the decree charged the assets descended with the debt of the ancestor. It was alleged that such a decree was conclusive upon the parties in Kentucky. This court held that the judgment was not valid here, because the defendants had not been brought into court in any manner whatever. In Gillet v. Camp, 23 Mo. 375, and Latimer v. Railway Co., 43 Mo. 105, the judgment was based solely upon constructive service by publication. In Smith v. Ross, 7 Mo. 464, the action was upon a foreign judgment against Smith, who was served, and Haniman, as to whom the return of process was "not found." The judgment was held to be void as to Haniman, because he was never brought into court. In Miles v. Jones, 28 Mo. 87, the defendant was personally served; but the judgment was attacked and set aside because it was procured by fraud. In Foote v. Newell, 29 Mo. 400, it appeared that a judgment was rendered against the defendant in Indiana (it does not appear from the statement of facts whether the defendant was in court or not, but it seems to be assumed that he was; at any rate, that question was not involved in the case), and that the sheriff had levied upon the property, and that by virtue of a statute of that state the defendant replevied the property levied on, and obtained a stay of execution, according to the law of that state, by giving a bond to pay the judgment. The statute (Act Ind. Feb. 4, 1831), provided: "And such bond, from the date of its execution, shall be taken as, and have the force and effect of, a judgment confessed in a court of record against the person or persons executing the same and against their estates, and execution may issue thereon accordingly." The judgment was not paid, and the bond was sued on in this state as a judgment of the state of Indiana. It was held that such a bond had "no affinity" to a judgment, and was not such a judgment as is contemplated by the act of congress. All of which is undoubtedly right, for such a bond is no more a judgment than is any contract or power of attorney authorizing a confession of a judgment. It is the act of the parties, and is not the judgment of a court. In Sevier v. Roddie, 51 Mo. 580, the action was upon a Tennessee judgment. It appeared that a third person had obtained a judgment against the defendant as principal and the plaintiffs as his sureties. The sureties paid the judgment, and the laws of Tennessee obtained a summary judgment, without notice, against the principal, and the suit was upon this judgment. It was properly held that the judgment was not such a judgment as the act of congress contemplated, because, the defendant not being in court, the proceeding was void. In State v. Bunce, 65 Mo. 349, it appeared that under the laws of Arkansas the plaintiff, a minor, had been relieved of the disability of infancy, "so far as to authorize him to demand, sue for, and receive all moneys belonging to him in the state of Missouri, in the hands of his curator," etc. Thereupon he sued the defendant, the curator of his estate in Missouri, upon his bond as such curator, to recover the estate in his hands. It was held that the minor could not maintain the suit, as under the laws of Missouri a minor can only appear by guardian, and that the legislature of Arkansas could not pass a law which would have the effect of giving a non-resident minor of this state a different *status* in the courts of this state from that of a resident minor in this state, when seeking the aid of the courts of this state. This decision is right, but it is not perceived how it applies to the case at bar, nor how the act of congress has any bearing on it; for the action was not for the enforcement of a judgment of a foreign state, but was simply an attempt to make the minor of age when he came into the Missouri courts, contrary to the laws of this state. It did not remove his disabilities absolutely, or at all in Arkansas, but only "so far as to authorize him to demand, sue for, and recover all moneys belonging to him in the state of Missouri, in the hands of his curator," etc. This was simply a bungling attempt by the courts of Arkansas to control judicial proceedings in Missouri, and is without precedent in law that we are aware of.

The defendant strenuously contends that the case of Machine Co. v. Radcliffe, 137 U. S. 287, 11 Sup. Ct. Rep. 92, 34 L. Ed. 670, is "on all fours" with the case at bar. In that case it appeared: "B, a citizen of Maryland, having executed a bond containing a warrant authorizing any attorney of any court of record in the state of New York, or any other state, to confess judgment for the penalty, and judgment having been entered against him in Pennsylvania by a prothonotary, without

service of process or appearance in person or by attorney, under a local law permitting that to be done, held, (1) that in a suit upon this judgment in Maryland the courts of Maryland were not bound to hold the judgment as obligatory, either on the ground of comity or of duty, contrary to the laws and policy of their own state; (2) that B could not properly be presumptively held to knowledge and acceptance of particular laws of Pennsylvania, or of all the states other than his own, allowing that to be done which was not authorized by the terms of the instrument he had executed." It was pointed out (1) that a judgment of a sister state was required to be observed in another state only when the defendant was served with process, or voluntarily entered his appearance, "or that he had in some manner authorized the proceeding;" (2) that an instrument authorizing a confession of judgment must be strictly followed, and its terms could not be enlarged by reading into it the laws of another state, of which he is not charged with knowledge, and hence, if the power to confess judgment was conferred upon any attorney of any court of record, its terms could not be enlarged so as to authorize a prothonotary to confess judgment, even if the laws of the state where the judgment was rendered expressly permitted a prothonotary to act whenever any attorney was authorized to do so. This case is "on all fours" with the case at bar, and is ample support for the decision herein, so far as it holds that, where the defendant has "authorized the proceeding," he is bound by the judgment, and the courts of other states must give force and effect to the judgment of the sister state whenever the authority has been strictly pursued, as is the case here; but it is unlike the case at bar in this: In that case the authority for the proceeding, conferred by the act of the defendant, was not strictly pursued; while here it was done. That judgment was held void in a sister state because a prothonotary does not come within the class of "attorneys of courts of record," and the act of such prothonotary was not, therefore, authorized by the defendant, and the law of the state could not enlarge the authority granted by the defendant. That decision is also valuable as showing plainly the principle upon which D'Arcy v. Ketchum and Pennoyer v. Neff, *supra*, both of which are referred to in that case, rested, to-wit, that in either case had the defendant been served with process, or voluntarily appeared, or in any manner authorized the proceeding. It also accentuates the proposition that, if the judgment is rendered against a party who is in court in any one of three ways specified, it is valid, not only in the state where it is rendered, but, under the act of congress, in all sister states.

We subscribe and adhere to all the cases cited and herein reviewed, but the rules there announced are not contravened by anything that is decided in the case at bar. On the contrary, those were all cases where the party sought to be charged had not been brought into court by personal service, and had not voluntarily entered his appearance, and had not authorized the proceeding against him, while in the case at bar the defendant had expressly authorized the exact proceeding that was had against him in Ohio. For these reasons, the opinion heretofore rendered in division No. 1 is adopted as the opinion of the court *in banc*, and the judgment of the circuit court is reversed, and the cause remanded, to be proceeded with in accordance herewith.

NOTE.—*Judgments on Confession by Warrant of Attorney.*—It is well settled that a debtor may authorize the confession of a judgment against him by warrant of attorney. Agard v. Hawks, 24 Ind. 276; Vliet v. Camp, 13 Wis. 198; Cross v. Moffat, 11 Colo. 210; Spence v. Emerine, 46 Ohio St. 433; Little v. Dyer, 138 Ill. 272; Harwood v. Hildreth, 24 N. J. L. 51; Wood v. Ellis, 10 Mo. 382; Athens v. Garland (Mich. 1896), 67 N. W. Rep. 559. And a warrant of attorney may authorize confession of judgment on a note. Parker v. Poole, 112 Tex. 86. In Kentucky it has been held that a warrant of attorney to confess judgment before suit is brought is void. O'Hara v. Lannier, 1 B. Mon. (Ky.) 100. A warrant of attorney to confess judgment must be strictly construed. Spencer v. Emerine, 46 Ohio St. 433; Little v. Dyer, 138 Ill. 272; Williams v. Bank, 67 Tex. 606. Also the authority thereby conveyed must be strictly pursued. Reid v. Southworth, 71 Wis. 288; Sweeny v. Stroud, 55 N. J. L. 97; Cushman v. Welsh, 19 Ohio St. 536; Whitney v. Bohlen, 157 Ill. 571; State Bank v. Sears, 13 Utah, 172. Thus where the warrant to confess judgment on a note of a specified date, judgment cannot be confessed on a note bearing a different date. Chase v. Dana, 44 Ill. 262. So also a judgment entered on a note by confession before anything was due, under a warrant of attorney which did not clearly confer authority for that purpose, will be set aside. Reid v. Southworth, 71 Wis. 288. A clause in a promissory note authorizing judgment "against me" will authorize it against the maker only and not against indorsers. Williams v. Bank, 67 Tex. 606. A power of attorney to appear before any court of record and confess judgment may be exercised before a clerk of the court in vacation. Kieth v. Kellogg, 97 Ill. 147. Where appearance was entered a day earlier than authorized by the warrant of attorney, the judgment is void for lack of jurisdiction. White v. Jones, 38 Ill. 159. The designation of the one who is to exercise the power must point out clearly the party intended; it may describe him, however, generally as "any attorney." Kieth v. Kellogg, 97 Ill. 147; Parker v. Poole, 12 Tex. 86; Sweeney v. Stroud, 55 N. J. L. 97. Thus where a warrant of attorney authorized A "or any other attorney" of the court in which judgment was to be confessed, to appear and confess judgment, and A and B, attorneys of the court, appeared and confessed, it was valid. Patton v. Stewart, 19 Ind. 233.

The contention made in the principal case, however, is that, although, the confession may be good in the state where it is entered, the judgment thereon has no extra territorial force where it does not comply with the law where the judgment is to be enforced. That, at least, is the contention of Justice Valliant in his dissenting opinion. He argues as follows:

"The question in the case at bar is, did the court in Ohio have jurisdiction of the person of the defendant when it rendered judgment against him? He was at

the time a resident of Missouri, and was not in Ohio while the suit was pending; but some years before, when he was in Ohio, he executed the note sued on, and included in it what purported to be an authorization to any attorney at law to appear in any court in the United States, waive process, enter appearance, and confess judgment on the note against him. Under that authorization some one said to be an attorney at law, did essay to enter the defendant's appearance, waive process, and confess judgment. That character of proceeding is said to be valid in Ohio, and I will assume that it is, and that the judgment is valid in that state. Suppose there had been no such authorization in the note, and an attorney at law, without any authority from defendant whatever, had entered his appearance and suffered the judgment to go. That would be a valid judgment in the state where rendered to the extent, at least that it could not be avoided collaterally. But the decisions above cited are authority for saying that if that judgment should be sued on here, the defendant may avoid it by a plea showing that the court had no jurisdiction of his person. Now, the supposed case differs from the case at bar only in this: that in that case there was no semblance of authority to the pragmatical attorney, while here there is claimed to be authority. But, if what is here claimed as authority is no authority, then there is no difference between the cases. That so-called authorization would certainly not be recognized as valid under the laws of this state, not because we do not recognize the right of a man to appoint an attorney in the regular way to enter his appearance in a suit in court, even for the purpose of suffering judgment to go against him, but because it is against the policy of our law to permit a man when entering into an obligation, to bargain away his right to be heard in court, should a question ever arise between him and his adversary in relation to it. A man who has signed a paper of that kind, if it is valid, is completely at the mercy of the holder, whatever the merits of the case may be, because the holder may go to any forum in the United States and select any attorney whom he chooses, and have judgment entered against the maker, who does not know that he is being sued, and this judgment creditor comes to the state in which the judgment debtor resides, and asks the courts of such state to say that "full faith and credit" must be given to the judgment of that sister state. But it is said that this contract was good in the state where it was made, and is therefore valid everywhere. That is not a rule of universal application. In the case last cited the Supreme Court of the United States said: 'The several states are of equal dignity and authority, and the independence of one implies the exclusion of power from all others; and so it is laid down by jurist as an elementary principle that the laws of one state have no operation outside of its territory, except so far as is allowed by comity.' That comity never admits the validity of an act done in another state by authority of the law there, if it contravenes the policy of the law here. In Missouri a man's right to be heard in court is inalienable, and a contract like the one in question is not only not authorized, but contrary to our policy. The pretended appearance that is entered under such authority is not real but fictitious. We are not forced to recognize it, and would do violence to our judicial policy if we did so.',

But two recent cases, very similar to the principa case, were not cited in either the court's opinion or that of Justice Valliant. These cases are, Teel v. Yost, 128 N. Y. 387, and First Nat. Bank of Athens v. Garland, 109 Mich. 515. In Teel v. Yost, it was held that a judgment duly entered in one state on a warrant of attorney is as conclusive in all other states as in the state where it is entered. The note in this case contained the ordinary "confession and release" clause. The court said: "This instrument is usually called a 'judgment note,'—an obligation quite common in Pennsylvania. The parties to the note were both residents of that state, and the court of common pleas was a court of general jurisdiction in that state, of which the prothonotary was clerk, and had charge of its records, and authority to enter judgments by confession. If this was a valid judgment under the laws of the state where it was rendered, it must, under the constitution of the United States, be accorded the same force and effect in this state that it had in the state where rendered." It will be noticed that in this case the warrant authorized "any attorney" to confess judgment; but since the law of Pennsylvania permitted a prothonotary to perform the duties of an attorney in such cases, the court held the proceeding valid and the judgment based thereon enforceable in any other state, although in such latter state no such proceeding would be authorized. The court after quoting from the decisions of the Supreme Court of Pennsylvania upholding such judgments, uses this strong language: "These clear and explicit announcements by the highest courts of the state, of the force and defect given to such judgments in that state, are entitled to the highest respect, and cannot, without ignoring the requirements of comity and propriety prevailing among sister states, be disregarded by the courts of other states. It should in any event be for the gravest reasons alone, and those demanded by the clearest rules of public policy and justice, that the courts of one state should deliberately deny to the decisions of the courts of another state the authority which they possess in the state where rendered." So also in First Nat. Bank v. Garland, 109 Mich. 515, it was held that a warrant of attorney, purporting to authorize "any attorney at law" to confess judgment on a note in "any court of record," is sufficient to sustain a judgment entered in a court of the state in which the warrant was executed, on confession of an attorney of such court, even though the warrant could be given no extra territorial force. This judgment was rendered in Ohio on a note containing the same clause as the note in the principal case. The court expressly followed the case of Teel v. Yost, *supra*, and held that "the warrant of attorney was such as to confer the necessary jurisdiction." It seems that Pennsylvania and Ohio have been flooding the country with these kind of notes and it is not unlikely that the questions of public policy as suggested by Judge Valliant in the principal case may yet become one of serious discussion. The weight of authority, however, is in favor of recognizing judgments based on such notes where the law of the state has been complied with.

JETSAM AND FLOTSAM.

RAILROAD TICKET "SCALPING."

The question as to the legal *status* of the business of ticket "scalping" appears to be still unsettled, though in the most recent cases the scalpers have had somewhat the better of the controversy. A short time ago the appellate division of the New York supreme court held the anti-scalping law passed by

the legislature this year unconstitutional, and took the ground that when a ticket is sold it belongs to the person who buys it, and that, unless its use is in some way limited, it has the same quality as every other kind of property. More recently the Lackawanna Railroad Company applied to Judge Hazel, of the United States District Court of Buffalo, for an injunction to restrain a number of ticket brokers from dealing in special Pan American tickets issued by that road. The judge declined to grant the injunction, for the reason that the Lackawanna was a member of the Trunk Line Association, the members of which, he said, combined to fix rates in violation of law, and, therefore, was not entitled to redress in a court of equity. At the same time, he held that the railroad company has the right to make special contracts with individual purchasers of tickets, and that the purchasers cannot violate such contracts by selling their tickets. It will be seen that two opposing views of the law are here set forth, though in the second case the decision went against the railroad company on another ground. The question at issue is important enough to render a final settlement a matter of wide interest.—*Bradstreet's Journal.*

LAWYER AS POET.

Quite a valuable edition of poems entitled "In the Shadow and Other Poems," has lately been published by one of America's bright young lawyers, Herbert B. Robinson. The editor of the *Chicago Legal News*, in speaking of these poems and of its author, said: Herbert B. Robinson, the son of Ex-Senator M. W. Robinson, who was in the senate while James B. Bradwell was in the house, many years ago. The father and son are now practicing law together in this city. The son is twenty two years of age. After reading these poems we are convinced that close application to the law has not driven the music from his soul. The prayer, which concludes the volume, is as follows:

Take not away my simple faith
Oh God of Reason, sheathed in steel,
And glitt'ring with the shining points
Of bloodless logic;—Let me kneel
A child of nature still, aghast
At my strange future;—Let the past,
Which filled my infant mind with hope,
Still guide me as I vainly grope.

Away, dark clouds of doubt and fear;
Away, ye earth bound chains of thought;
From out this prison of the brain
My soul must fly! The answer sought
When my poor reason glowed with fire
Is not my goal,—not my desire;
I wish it not, Oh God of Love,
But Thee, Thy Blessing from above.

PROCRASTINATION.

In no profession is the tendency to procrastinate so strong as among lawyers. Hence, the appropriateness of the following lines, entitled

SOME OTHER DAY.

There are wonderful things we are going to do,
Some other day;
And harbors we hope to drift into,
Some other day,
With folded hands, the oars that trail,
We watch and wait for a favoring gale
To fill the folds of an idle sail,
Some other day.

We know we must toil if ever we win,
Some other day;
But we say to ourselves, there's time to begin
Some other day;
And so, deferring, we loiter on,
The strength of the hope we leaned upon,
Some other day.

And when we are old and our race is run,
Some other day;
We fret for the things that might have been done
Some other day;
We trace the path that leads us where
The beckoning hand of grim despair
Leads us yonder out of there,
Some other day!

—*Sommerville Journal.*

BOOKS RECEIVED.

A Handbook of Parliamentary Practice. By Rufus Waples, Author of Treatises on Attachment and Garnishment, Proceedings in Rem, Homestead and Chattel Exemptions, etc. Second Edition, Enlarged. Chicago: Callaghan and Company. Cloth, pp. 306. Price $1.00. Review will follow.

A Treatise on Injunctions and other Extraordinary Remedies, covering *habeas corpus*, *mandamus*, prohibition, *quo warranto*, and *certiorari* or review. Containing an exposition of principles governing these several forms of relief, and their practical use; with citations of all the authorities to date. By Thomas Carl Spelling. Second edition, revised and enlarged. In two volumes. Boston: Little, Brown, and Company, 1901. Sheep, pp. 1894. Price $12.50. Review will follow.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts

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28. BILLS AND NOTES—Enforcement—Partnership.—Party on the faith of whose name and collateral credit was given to take up certain partnership notes entitled to participate in the funds in hands of firm's receiver.—LAWSON v. DUNN, N. J., 49 Atl. Rep. 1087.

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43. CORPORATIONS—Note—Liability of Stockholders. —Where a note given by a corporation is paid by a surety thereon, the surety may recover the amount paid from those who are stockholders at the time payment is so made.—YULE v. BISHOP, Cal., 65 Pac. Rep. 1094.

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53. CRIMINAL LAW—Court Expressing Opinion.—Instruction of court, in trial for violating banking law, that in his opinion it was the duty of the jury to convict, held ground for new trial.—BREESE v. UNITED STATES, U. S. C. C. of App., Fourth Circuit, 108 Fed. Rep. 804.

54. CRIMINAL LAW—Remark of Judge.—Remarks by judge held not violation of constitutional provision against instructing as to matters of fact.—STATE v. MARCHBANKS, S. Car., 39 S. E. Rep. 187.

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67. EQUITY—Accounting—Procedure.—The court of chancery has power to pass on an account without the intervention of a master.—GLOVER v. JONES, Me., 49 Atl. Rep. 1104.

68. EQUITY — Adequate Remedy at Law. — Where chattle mortgagor has reasonably paid the debt, he has an adequate remedy at law for determining questions as to the mortgaged property. — LOGGIE v. CHANDLER, Me., 49 Atl. Rep. 1059.

69. EQUITY—"Clean Hands" of Complainant.—The principle that he who comes into equity must do so with clean hands affects a complainant only when his equity has a necessary relation to the equity for which he sues.—SHAVER v. HELLER & MERZ CO., U. S. C. C. of App., Eighth Circuit, 108 Fed. Rep. 821.

70. EQUITY—Master—Objection to Evidence.—Where evidence before a master is objected to, the master should receive it, subject to the objection, so that the court may pass upon the matter on review.—KANSAS LOAN & TRUST CO. v. ELECTRIC RY., LIGHT & POWER CO., U. S. C. C., W. D. (Mo.), 108 Fed. Rep. 702.

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97. FERRIES—Establishment.—An order of the commissioners of a county to settle and lay out a ferry as petitioned for amounts to an establishment of the ferry.—ROBINSON v. LAMB, N. Car., 39 S. E. Rep. 579.

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100. FRAUD—Misrepresentations.—Fraudulent misrepresentations of a material fact on sale of personalty, as inducement to contract, held a defense to an action on a note given for the price.—HOOPER v. WHITAKER, Ala., 30 South. Rep. 355.

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105. HOMICIDE — Self-Defense.—An instruction that defendant was justified in taking prompter measures of self-defense on attack by deceased, if he was a dangerous man held erroneous.—MITCHELL v. STATE, Ala., 30 South. Rep. 348.

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107. INJUNCTION — Temporary — Finding of Fact.—Findings of fact on motion for temporary injunction held not conclusive on the hearing for permanent injunction.—ALSTON v. LIMEHOUSE, S. Car., 39 S. E. Rep. 188.

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109. INSURANCE—Conditions — Waiver.—Acceptance of premium after burning of property held to waive condition in policy that it should be void in the event the insurer's ownership was not unconditional.—MECHANICS' & TRADERS' INS. CO. v. SMITH, Miss., 30 South. Rep. 362.

110. INSURANCE—Construction of "Serious Illness."—Term "serious illness," in application for insurance, means illness permanently impairing health.—DRAKEFORD v. SUPREME CONCLAVE KNIGHTS OF DAMON, S. Car., 39 S. E. Rep. 523.

111. INSURANCE—Misstatements.—It is fraud on the insurance company, where defendant makes misstatements to its physician and conceals facts.—DRAKEFORD v. SUPREME CONCLAVE KNIGHTS OF DAMON, S. Car., 39 S. E. Rep. 523.

112. INTERNAL REVENUE—Note not Stamped.—That a note sued on is not properly stamped as required by act of congress, held not to authorize its rejection in evidence.—HOOPER v. WHITAKER, Ala., 30 South. Rep. 355.

113. INTEREST—Collection Barred.—Interest may be collected on a debt barred by statute from date when first due, where it is acknowledged by an agreement in writing.—SUBER v. RICHARDS, S. Car., 39 S. E. Rep. 540.

114. INTOXICATING LIQUORS—Criminal Prosecution—Witnesses.—Witnesses not named in indictment as one to whom liquors were sold may testify as to sales to others.—STATE v. GREEN, S. Car., 39 S. E. Rep. 185.

115. INTOXICATING LIQUORS—Evidence.—Not competent to ask a witness, who had never drank "hop jack," as to whether the ordinary use thereof would make one drunk.—COSTELLO v. STATE, Ala., 30 South. Rep. 376.

116. INTOXICATING LIQUORS — Indictment — Proof.—Under an indictment for selling liquors, proof of sale on a day other than that charged held admissible.—STATE v. GREEN, S. Car., 39 S. E. Rep. 185.

117. JUDGMENT—Res Adjudicata.—The rule that an adjudication by an appellate tribunal becomes the law of the case on all subsequent trials should not be extended beyond the questions that were actually considered and decided.—PATILLO v. ALLEN-WEST COMMISSION CO., U. S. C. C. of App., Eighth Circuit, 108 Fed. Rep. 723.

118. JUDGMENT—Res Judicata.—A decree, dismissing a bill to have deed cancelled, held conclusive of all questions going to the validity of such deed.—SAMUELS v. REVIERE, U. S. C. C. of App., Fifth Circuit, 108 Fed. Rep. 718.

119. JUDGMENT—Special Finding.—A finding that goods were sold to one defendant does not support an action for a sale to two defendants, or authorize a judgment against one.—DOBBS v. PURINGTON, Cal., 65 Pac. Rep. 1091.

120. JUDICIAL SALES—Payments—Protection.—Under Acts 1883 84, p. 213, a purchaser of land at a sale by a special commissioner held protected in payments to such commissioner.—PULLIAM v. TOMPKINS, Va., 39 S. E. Rep. 221.

121. JURY—Talesman.—It is not necessary that names of persons summoned as talesman in a criminal trial should appear on the list of jurors served on defendant.—MITCHELL v. STATE, Ala., 30 South. Rep. 348.

122. LIBEL AND SLANDER—Disparaging Circulars.—Statements in circulars which merely disparage the goods of plaintiff, will not support an action for libel.—NONPAREIL CORK MFG. CO. v. KEASBY & MATTISON CO., U. S. C. C., E. D. (Penn.), 108 Fed. Rep. 721.

123. LICENSES—Parol—Revocable.—Licenses to enter and cut timber created, by parol, while it remains executory as to timber not cut, is revocable at will of the owner, or by his death or conveyance of the land without reservation.—EMERSON v. SHORES, Me., 49 Atl. Rep. 1051.

124. LIFE TENANT—Liability for Taxes.—A life tenant is only liable for taxes accruing during his life tenancy.—TRIMMIER v. DARDEN, S. Car., 39 S. E. Rep. 872.

125. LIMITATIONS OF ACTIONS—New Promise.—A letter held a sufficient promise to pay debt to take it out of the statute of limitations.—SUBER v. RICHARDS, S. Car., 39 S. E. Rep. 540.

126. MARRIAGE—Slave Marriages.—Act March 12, 1872, legalizing certain marriages among slaves, applies only to cases where the parties had agreed to occupy the relation of husband and wife, but where the power to contract was wanting.—ROBERSON v. MCCAULEY, S. Car., 39 S. E. Rep. 570.

127. MASTER AND SERVANT—Defects—Master's Promise.—Remarks of foreman held not a promise by the master that defects would be cured and dangerous places made safe.—DWYER v. NIXON, U. S. C. C. of App., Second Circuit, 108 Fed. Rep. 751.

128. MASTER AND SERVANT—Reassumption of Risk.—Whether a servant reassumes risk pending the removal of the defects, or whether it remains on the master, held question for jury.—DEMPSY v. SAWYER, Me., 49 Atl. Rep. 1035.

129. MASTER AND SERVANT—Risk on Master—Assumption.—Risk of injury from defective machinery primarily on master, unless servant voluntarily assumes it.—DEMPSEY v. SAWYER, Me., 49 Atl. Rep. 1035.

130. MASTER AND SERVANT—Safe and Dangerous Methods.—Where there is a comparatively safe and a dangerous way of doing the same work, and a servant assumes the latter method, he is guilty of contributory negligence.—MORRIS v. DULUTH, F. S. & A. RY. Co., U. S. C. C. of App., Eighth Circuit, 108 Fed. Rep. 747.

131. MASTER AND SERVANT—Warning Servant.—Failure of foreman of street-railroad company to warn engineer of location of posts along the line of the road not negligence.—NORTH BIRMINGTON ST. R. CO. v. WRIGHT, Ala., 30 South. Rep. 360.

132. MASTER AND SERVANT—Wrongful Discharge—Compensation.—Where employee under contract to be retained until good cause shown for discharge is wrongfully discharged, he can recover the full value of his contract at the time of the breach.—RHOADES v. CHESAPEAKE & O. RY. CO., W. Va., 39 S. E. Rep. 209.

133. MECHANICS' LIENS—Notice.—Notice to claim lien need not be given, where the purchaser of the materials was the owner of the property.—MATTHEW v. MONTS, S. Car., 39 S. E. Rep. 575.

134. MINES AND MINERALS—Relocation.—*Prima facia* evidence of the location of a mine by the grantor of the one in possession is sufficient to justify a verdict against one who, knowing of such location, relocated it on the claim that it was abandoned.—YREKA MIN. & MILL. Co. v. KNIGHT, Cal., 65 Pac. Rep. 1091.

135. MINES AND MINING — Lease—Notice of Sale.—Where a mining lease provided for termination on a sale of the property, and the officer of lessor who executed the lease notified the lessee that the property was sold, such lessee was justified in relying on such notice.—OBER v. SCHENK, Utah, 65 Pac. Rep. 1073.

136. MORTGAGES—Foreclosure—Premature.—Suit to foreclose mortgage according to term thereof, though before principal of note secured was due, held not prematurely brought.—MEYER v. WEBER, Cal., 65 Pac. Rep. 1110.

137. MORTGAGE—Note and Mortgage Considered Together.—Under Civ. Code, § 1642, a note and mortgage securing the same, delivered at the same time, must be taken and considered together.—MEYER v. WEBER, Cal., 65 Pac. Rep. 1110.

138. MORTGAGES.—In writ of entry by mortgagee to recover possession for the purpose of foreclosure, the administrator of deceased mortgagor cannot be made a party defendant.—GOLDER v. GOLDER, Me., 49 Atl. Rep. 1050.

139. MUNICIPAL CORPORATIONS—City—Incorporation.—An incorporated town cannot become a city until legislative enactment to that effect.—SAVANNAH, F. & W. RY. Co. v. JORDAN, Ga., 39 S. E. Rep. 511.

140. MUNICIPAL CORPORATIONS—Sewer—Duty to Repair.—It is the city's duty to maintain and keep sewer in repair so long as it was used for drainage purposes.—HAMLIN v. CITY OF BIDDEFORD, Me., 49 Atl. Rep. 1100.

141. MUTUAL BENEFIT SOCIETIES—Financee as Beneficiary.—Where a life certificate of a member was payable to 'B "as his fiancee," his deserted wife cannot object that deceased was incapable of contracting marriage with B.—WOODMEN OF THE WORLD v. RUTLEDGE, Cal., 65 Pac. Rep. 1105.

142. NEGLIGENCE—Contributory Negligence.—In an action to recover for injuries held error to give the jury the impression that plaintiff would recover from defendant if both were equally negligent.—BRUNSWICK & W. R. Co. v. WIGGINS, Ga., 39 S. E. Rep. 551.

143. NEGLIGENCE—Nonsuit.—Where there is evidence of negligence by defendant and contributory negligence by plaintiff, held error to direct a nonsuit.—BURNS v. SOUTHERN RY. Co., S. Car., 39 S. E. Rep. 567.

144. NEGLIGENCE—Presumption—Carriers.—There is a presumption of negligence arising from the fact that the passenger was injured while on defendant's train.—COOPER v. GEORGIA, C. & N. RY. Co., S. Car., 39 S. E. Rep. 543.

145. NEW TRIAL—Immaterial Testimony.—Admitting immaterial testimony held not necessarily cause for new trial.—RALEIGH & G. R. Co. v. BRADSHAW, Ga., 39 S. E. Rep. 555.

146. NOTICE—Recorded Deed—Burden of Proof.—The burden of proof to show actual notice of a prior unrecorded deed, as against the holder of a subsequent deed by prior record, is on the party holding the unrecorded deed.—SIDELINGER v. BLISS, Me., 49 Atl. Rep. 1094.

147. NOTICE—Record of Judgment—Actual Notice.—Prior record of the judgment, though, constructive notice to subsequent purchasers, will not avail against actual notice given by announcements of the judgment creditor to bidders inviting them to purchase on a statement excluding the idea that the judgment was a lien.—BORDEN v. HUTCHINSON, N. J., 49 Atl. Rep. 1088.

148. NUISANCE—Sewer System—Though city has authority to establish sewerage system, equity will enjoin maintenance of the same, where it creates a nuisance dangerous to health.—CITY OF WAYCROSS v. HOUK, Ga., 39 S. E. Rep. 577.

149. NUISANCE — Street Railroad — Construction.—A street railway authorized by ordinance to construct its railroad cannot be regarded as committing a nuisance in so doing.—WATSON v. FAIRMONT & SUBURBAN RY. Co., W. Va., 39 S. E. Rep. 193.

150. PARTNERSHIP — Requisites.—An agreement between tug owners to place their vessels under a common management and to divide their net earnings on a fixed basis held to constitute a partnership.—FLEMING v. LAY, U. S. C. C. of App., Sixth Circuit, 109 Fed. Rep. 952.

151. PATENTS—"Improvements"—Sufficiency.—Superiority of device over patent must be due to a difference in function or mode of operation, or some essential change in character.—CROWN CORK & SEAL CO. v. ALUMINUM STOPPER CO., U. S. C. C. of App., Fourth Circuit, 108 Fed. Rep. 845.

152. PAUPERS—Legal Home.—In order to retain a legal home in a town, a person need not at all times have a house or room to which he is entitled to go.—INHABITANTS OF SOUTH THOMASTON v. INHABITANTS OF FRIENDSHIP, Me., 49 Atl. Rep. 1056.

153. PAYMENT—Application.—Creditor on receiving payments without application may apply them to debt already barred, thus tolling the statute.—HOPPER v. HOPPER, S. Car., 39 S. E. Rep. 366.

154. PLEADING — Amendment. — Plaintiff may be allowed to amend his declaration by striking out any portion of the claim sued.—INHABITANTS OF SOUTH THOMASTON v. INHABITANTS OF FRIENDSHIP, Me., 49 Atl. Rep. 1056.

155. PLEADING—Amendment After Dismissal.—A motion for leave to amend is too late after dismissal on demurrer for want of jurisdictional facts.—SHAW v. AMERICAN TOBACCO CO., U. S. C. C. of App., Fifth Circuit, 108 Fed. Rep. 842.

156. PLEADING—Answer — Partial Defense.— Where answer contained averments showing partial defense, they should not be stricken out on a general demurrer.—HIGGINBOTHAM v. CONWAY, Ga., 39 S. E. Rep. 550.

157. PLEADING—Counterclaim.—There is no rule of law requiring facts set up in counterclaim to be separately and specifically stated.—CO-OPERATIVE PUB. CO. v. WALKER, S. Car., 39 S. E. Rep. 525.

158. PLEADING—Demurrer—Effect of Sustaining.—Where bill is demurred to, and one ground of demurrer is sustained, it puts the case out of court, unless the bill is amended.—COLEMAN v. BUTT, Ala., 30 South. Rep. 364.

159. PLEADING—General Issue.—Plea of general issue puts on plaintiff the necessity of proving material allegations of his complaint, unless waived.—MCGHEE v. CASHIN, Ala., 30 South. Rep. 367.

160. PLEADING—Redundancy.—Where redundant allegations are not objected to, evidence relating to the issue raised by them held admissible.—DENT v. SOUTH BOUND R. CO., S. Car., 39 S. E. Rep. 527.

161. PUBLIC LANDS—Contest—Register.—Under Pol. Code, §§ 501, 3414, 3498, a demand for reference of a contest between applicants for purchase of state lands is of no effect unless the fee of the register is paid.—SHERMAN v. WRIGHT, Cal., 65 Pac. Rep. 1096.

162. PUBLIC LANDS—Damages.—Under Laws 1891, ch. 155, action of board of claims in awarding no damages for failure of title to land granted by state held proper.—KILLAM v. STATE, 71 N. Y. Supp. 1041.

163. QUIETING TITLE — Timber Claims.—Under Laws 1893, ch. 6, where defendant claims an interest under contract in timber on plaintiff's land, the court, on adjudging the claim invalid, cannot properly dismiss the action.—RUMBO v. GAY MFG. CO., N. Car., 39 S. E. Rep. 581.

164. RAILROADS—Construction.—Railroad companies have the right to exercise reasonable discretion in the construction of their roadbeds.—MORRIS v. DULUTH, ETC. RY. CO., U. S. C. C. of App., Eighth Circuit, 108 Fed. Rep. 747.

165. RAILROADS—Judicial Sale—Liens.—A purchaser of railroad property at judicial sale succeeds to all the rights of the former owner and the owners of the liens foreclosed, as against an unforeclosed lien.—CONNOR v. TENNESSEE CENT. RY., U. S. C. C. of App., Sixth Circuit, 109 Fed. Rep. 931.

166. RAILROADS—Liable for Fires.—Railroad company held liable, under Rev. St. § 1688, for injuries by fire from its locomotives to growing trees, turpentine boxes, etc.—DENT v. SOUTH BOUND R. CO., S. Car., 39 S. E. Rep. 527.

167. RAILROADS—Liability for Fires.—Railroad company permitting dry grass on its right of way, liable for fire caused by sparks.—SHIELDS v. NORFOLK & C. R. CO., N. Car., 39 S. E. Rep. 582.

168. RECEIVERS—Action Against—Proof.—In an action by a passenger to recover for wrongful ejection, as against receivers of road, plaintiff must prove that defendants were receivers and had control thereof, and that he was ejected by persons in defendant's employ.—MCGHEE v. CASHIN, Ala., 30 South. Rep. 367.

169. RECEIVERS—Authority to Continue Litigation.—A receiver does not, by virtue of his appointment, become a party to the litigation, so as to entitle him to file a pleading therein.—YOUTSEY v. HOFFMAN, U. S. C. C., D. (Ky.), 108 Fed. Rep. 698.

170. RECEIVERS—Not a Party to Suit—May Contest.—The receiver of an insolvent firm, not made a party to an action against such firm, may contest debt of the judgment creditor.—LAWSON v. DUNN, N. J., 49 Atl. Rep. 1087.

171. RECEIVERS—Party—Pending Litigation.—A judgment entered against a firm for which a receiver has been appointed in an action in which such receiver was not made a party has no force against him.—LAWSON v. DUNN, N. J., 49 Atl. Rep. 1087.

172. RECEIVING STOLEN GOODS — Sufficient Indictment.—Indictment for receiving stolen goods, not alleging that defendant knew they were stolen, held insufficient.—ANDERSON v. STATE, Ala., 30 South. Rep. 375.

173. REMOVAL OF CAUSES—Dismissal as to One Defendant.—A plaintiff may dismiss his action before trial as to one of two or more defendants, on whose application the cause was removed into a federal court on the ground of a separable controversy.—YOUTSEY v. HOFFMAN, U. S. C. C., D. (Ky.), 108 Fed. Rep. 699.

174. SAFE-DEPOSIT COMPANIES — Liability.—A contract of a safe-deposit company construed, and held not to relieve it of its obligation to guard the property placed in its charge as a bailee for hire.—CUSSEN v. SOUTHERN CALIFORNIA SAV. BANK, Cal., 65 Pac. Rep. 1099.

175. SALES — Repudiation of Contract.—The acts of a purchaser in refusing to pay for deliveries made, and in denying liability therefor, held to amount to a repudiation of the contract.—SCULLY STEEL & IRON CO. v. OLD MEADOW ROLLING MILL CO., U. S. C. C. of App., Third Circuit, 108 Fed. Rep. 782.

176. SALVAGE—Authority of Master.—A master whose vessel has stranded has no authority on behalf of the insurers to promise his men extra pay for work done as salvage services.—THE C. F. BIELMAN, U. S. D. C., E. D. (Wis.), 108 Fed. Rep. 878.

177. SET OFF AND COUNTERCLAIM — Unliquidated Claim.—Set-off of unliquidated damages as against a liquidated claim held not permissible.—BUNTING v. COCHRAN, Va., 39 S. E. Rep. 229.

178. SHIPPING — Charters—Port Customs.—A custom of the port in order to be read into the charter, must be reasonable, certain, lawful, and consistent with the charter, and so general and long-established as to be conclusively presumed to have been within the knowledge of the parties.—CONTINENTAL COAL CO. v. BIRDSALL, U. S. C. C. of App., Fourth Circuit, 108 Fed. Rep. 882.

179. SPECIFIC PERFORMANCE — Part Performance.—Equity should not decree specific performance of parol agreement where the acts of part performance are not positive and substantial.—HUDSON v. MAX MEADOWS LAND & IMPROV. CO., Va., 39 S. E. Rep. 215.

180. SPECIFIC PERFORMANCE — Sale of Whisky.—Equity will not decree the specific performance of a contract of sale of whisky stored in a United States warehouse.—LANGFORD v. TAYLOR, Va., 39 S. E. Rep. 228.

181. STATUTES—Amending Amended Statute.—A statute is not invalid, although it purports to be amendatory of a prior amended statute where the provisions of the new statute are independent and complete in themselves.—CITY OF BEATRICE v. MASSLICH, U. S. C. C. of App., Eighth Circuit, 108 Fed. Rep. 745.

182. STREET RAILROADS—Franchise—Assignment.—A franchise granted to an individual may be valid by assigned of the same to a private corporation.—WATSON v. FAIRMOUNT & SUBURBAN RY. CO., W. Va., 39 S. E. Rep. 198.

183. TAXATION—Tax Sale—When Made.—Power to sell land for taxes must be exercised during the existence of the tax lien.—HARNED v. CITY OF CAMDEN, N. J., 49 Atl. Rep. 1082.

184. TAXATION—Tax Title.—Where plaintiff holds the legal title, redemption by defendants from tax sale gives them no interest or right of occupancy as

against a deed from the owner to plaintiff.—WILLEY v. GREENFIELD, 71 N. Y. Supp. 1046.

185. TELEGRAPHS AND TELEPHONES — Erection of Poles —A telephone company, which by permission of municipal authorities erects lines along highways, acquires a mere license, and not a permanent vested interest in the land itself.—READFIELD TELEPHONE & TELEGRAPH CO. v. CYR, Me., 49 Atl. Rep. 1047.

186. TENANCY IN COMMON.—Where tenant in common is liable for waste by the removal of coal from land, co-tenant may waive tort and sue for an accounting.—CECIL v. CLARK, W. Va., 39 S. E. Rep. 202.

187. TENANCY IN COMMON — Grantee of One Tenant—Adverse Possession.—Possession by grantee in deed of land held by tenants in common under a deed from one tenant held to amount to ouster and to establish title after 10 years.—SUDDUTH v. SUMERAL, S. Car., 39 S. E. Rep. 534.

188. TIMBER—Realty or Personalty.—Where growing timber is sold, it remains an incident of real property so long as it remains uncut, but, when cut, it becomes personalty.—EMERSON v. SHORES, Me., 49 Atl. Rep. 1051.

189. TOWNS — Charter of Incorporation — City.—Act incorporating a town never having been repealed, the existence of such place as a town held not affected by acts referring to it as a city.—SAVANNAH, ETC. RY. CO. v. JORDAN, Ga., 39 S. E. Rep. 511.

190. TRADE-MARKS AND TRADE-NAMES—Geographical Terms.—Use of geographical or descriptive terms to palm off the goods of one manufacturer as those of another may be enjoined.—SHAVER v. HELLER & MERZ CO., U. S. C. C. of App., Eighth Circuit, 108 Fed. Rep. 821.

191. TRADE-MARKS AND TRADE-NAMES — Unfair Competition.—Sale of goods of one manufacturer as those of another is unfair competition, authorizing an injunction.—SHAVER v. HELLER & MERZ CO., U. S. C. C. of App., Eighth Circuit, 108 Fed. Rep. 821.

192. TRESPASS — Life Tenant — Possession.—Party in possession, whether as life tenant or under conditional fee, can maintain trespass.—PERRY v. JEFFERIES, S. Car., 39 S. E. Rep. 515.

193. TRIAL—Assignment of Errors.—Errors assigned on exceptions entered consent of the court without the knowledge of plaintiff's counsel, should not be considered.—OBER v. SCHENCK, Utah, 65 Pac. Rep. 1073.

194. TRIAL — Cross-Examination.—Where court erroneously excludes certain cross examination, and afterwards admits his error, the witness may be restored for further cross-examination.—PERRY v. JEFFERIES, S. Car., 39 S. E. Rep. 515.

195. TRIAL—Eleven Jurors — Consent.—Where juror is excused for providential cause, and party consents that the trial should proceed before 11 jurors, he cannot complain.—RALEIGH & G. R. CO. v. BRADSHAW, Ga., 39 S. E. Rep. 555.

196. TRIAL—Examination—Leading Questions.—The asking of leading questions is within the discretion of the trial court.—STATE v. MARCHBANKS, S. Car., 39 S. E. Rep. 187.

197. TRIAL—Instruction — One Theory.—Instruction applicable to one theory proper, though ignoring another theory, as to which instruction has been given.—RHOADES v. CHESAPEAKE & O. RY. CO., W. Va., 39 S. E. Rep. 209.

198. TRIAL — Limitation of Evidence.—A verdict should not be set aside because evidence admissible for one purpose only was not so limited in the charge, unless such limitation was requested.—LIEBRANDT v. SORG, Cal., 65 Pac. Rep. 1098.

199. TRIAL—Nonsuit.—Where there was any evidence establishing plaintiff's case, held error to grant a nonsuit, not leaving the credibility of witness for the jury —RYKARD v. DAVENPORT, S. Car., 39 S. E. Rep. 272.

200. TRIAL — Order of Proof.—Allowing plaintiff in trespass to show certain parties trespassing, before proving that they were agents of defendant, held not error.—PERRY v. JEFFERIES, S. Car., 39 S. E. Rep. 515.

201. TROVER AND CONVERSION—Measure of Damages. —Measure of damages in trover is the value of the property, with interest.—CECIL v. CLARK, W. Va., 39 S. E. Rep. 202.

202. TROVER AND CONVERSION—Venue.—A defendant in an action for damages for conversion of oysters wrongfully taken from plaintiff's oyster beds cannot have change of venue to the county in which the beds are situated.—MAKELY v. A. BOOTHE CO., N. Car., 39 S. E. Rep. 582.

203. TRUSTS—De Son Tort.—A plaintiff who intrusted money to an agent which the agent wrongfully deposited to cover gambling transactions, held entitled to recover the amount so deposited from defendant as a trust *de son tort*.—CENTRAL STOCK & GRAIN EXCH. OF CHICAGO v. BENDINGER, U. S. C. C. of App., Seventh Circuit, 109 Fed. Rep. 926.

204. TRUSTS—Innocent Purchaser—Pleading.—To defeat a trust agreement affecting lands on the ground that defendant was a subsequent innocent purchaser such defense must be explicitly pleaded.—NEWMAN v. SCHWERIN, U. S. C. C. of App., Sixth Circuit, 109 Fed. Rep. 942.

205. USURY—Conflict of Laws.—Contract to pay interest is governed by the law of the place of making the contract or the place of its performance.—BARRETT v. CENTRAL BUILING & LOAN ASSN., Ala., 30 South. Rep. 347.

206. VENDOR AND PURCHASER—Payment—Evidence.—In action to recover price of land, where issue is whether it was to be paid in part by stock of the vendee corporation, evidence as to value of the land and the value of the stock held competent.—LARKINSVILLE MIN. CO. v. FLIPPO, Ala., 30 South. Rep. 358.

207. WATER AND WATER COURSES—Appropriation of Water Power.—Appropriation of unappropriated river valley space by a mill owner must be an actual occupation by dams.—NATIONAL FIBRE BOARD v. LEWISTON & A. ELECTRIC LIGHT CO., Me., 49 Atl. Rep. 1095.

208. WATER AND WATER COURSES — Diversion—Prescription.—Diverting all the waters of a stream for 40 years, does not give a prescriptive right to have all the waters entering the stream or any of its tributaries flow that way.—CAVE v. TYLER, Cal., 65 Pac. Rep. 1089.

209. WILLS—Contest—Evidence.—On the trial of an issue of *devisavit vel non*, *caveatrix* can prove that she was next of kin of the decedent by the declarations of the latter.—MALONE v. ADAMS, Ga., 39 S. E. Rep. 507.

210. WILLS — Trustee.—Agreement between trustee under will and beneficiary, whereby the son became absolutely entitled to receive one-fourth of the income quarterly, held not in conformity with the trust.—MURPHY v. DELANO, Me., 49 Atl. Rep. 1053.

211. WITNESSES—Death of One Party to Contract.—In a suit by an administratrix for the value of improvements put on defendant's lot under a parol promise to convey it to intestate, defendant, over objection, cannot testify as to such promise.—LUTON v. BADHAM, N. Car., 39 S. E. Rep. 581.

212. WITNESSES—Disregarding Testimony.—The jury cannot, because a witness was in the employ of one of the parties, arbitrarily disregard his testimony.—BRUNSWICK & W. R. CO. v. WIGGINS, Ga., 39 S. E. Rep. 551.

213. WITNESSES — Foreclosure—Mortgagee.—In foreclosure against widow of deceased mortgagor in possession, mortgagee is a competent witness.—GOLDER v. GOLDER, Me., 49 Atl. Rep. 1050.

214. WITNESSES—Impeachment.—Witness cannot be impeached by proof of contradictory statements, without laying foundation for the same.—RALEIGH & G. R. CO. v. BRADSHAW, Ga., 39 S. E. Rep. 555.